

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 43 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 8-1-2-34.5 IS AMENDED TO READ AS
- 4 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 34.5. (a) The
- 5 commission shall establish reasonable rules and regulations to govern
- 6 the relations between public utilities and any or all classes of their
- 7 customers. Those rules and regulations shall cover the following
- 8 subjects:
- 9 (1) extension of service;
- 10 (2) extension of credit;
- 11 (3) deposits, including interest thereon;
- 12 (4) billing procedures;
- 13 (5) termination of service;
- 14 (6) complaints; and
- 15 (7) information and notice to customers of their rights under the
- 16 rules.
- 17 (b) Notwithstanding IC 8-1-2-54, the commission may investigate
- 18 and enter orders on complaints filed by individual customers arising
- 19 under this section **or under IC 8-1-38**. The commission may establish
- 20 an appeals division to act on its own behalf regarding individual
- 21 customer complaints. The decision of the division shall be binding on
- 22 all parties to the complaint. The commission shall review decisions of
- 23 the appeals division upon timely request by an affected party.
- 24 (c) This section does not invalidate any rule or regulation adopted

by the commission before July 1, 1979, to govern the relations between public utilities and their consumers if the rule or regulation is consistent with this section.

SECTION 2. IC 8-1-38 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

Chapter 38. Electric Utility Tree Trimming Practices

Sec. 1. (a) As used in this chapter, "affected property owner" means the record owner of real property on which a utility plans to perform tree trimming.

(b) The term does not include a property owner that is a governmental unit.

Sec. 2. As used in this chapter, "tree trimming" means:

- (1) the trimming or pruning of one (1) or more trees; or
- (2) the cutting down and removal of one (1) or more trees.

Sec. 3. As used in this chapter, "utility" refers to any of the following:

- (1) A public utility (as defined in IC 8-1-2-1(a)).
- (2) A municipally owned utility (as defined in IC 8-1-2-1(h)).
- (3) A corporation organized under IC 8-1-13.
- (4) A corporation organized under IC 23-17 that:
 - (A) is an electric cooperative; and
 - (B) has at least one (1) member that is a corporation organized under IC 8-1-13.

Sec. 4. Except as provided in section 10 of this chapter, a utility shall, not more than ninety (90) days before and not less than seventy-five (75) days before a planned tree trimming, send by certified mail a packet to each affected property owner. The information packet must include contact information for a utility representative to answer questions of the affected property owner.

Sec. 5. If an affected property owner requests a meeting with the utility to discuss the planned tree trimming not later than sixty (60) days before the date of the planned tree trimming, the utility representative shall schedule the meeting at a time that is convenient to the affected property owner and the utility representative.

Sec. 6. At a meeting scheduled under section 5 of this chapter, the utility representative shall inform the affected property owner of alternatives to the planned tree trimming, including the following:

- (1) Reconstruction or relocation of electric facilities at the expense of the affected property owner.
- (2) Placing utility lines underground at the expense of the affected property owner.
- (3) Requesting a hearing before the commission under section 11 of this chapter and IC 8-1-2-34.5.
- (4) Entering into an agreement under section 9 of this chapter

1 that requires the affected property owner to perform tree
2 trimming.

3 **Sec. 7.** The utility representative shall attempt to resolve any
4 conflicts raised by the affected property owner. If an affected
5 property owner objects to the proposed tree trimming, the utility
6 may not proceed with the proposed tree trimming until the conflict
7 is resolved under this section or under a proceeding before the
8 commission under section 11 of this chapter.

9 **Sec. 8. (a)** This section applies to tree trimming that includes the
10 cutting down and removal of one (1) or more trees.

11 **(b)** Except as provided in subsection (c) and section 10 of this
12 chapter, before a utility may cut down and remove a tree, the
13 utility must obtain the signature of the affected property owner
14 indicating that:

15 **(1)** the utility has notified the affected property owner of the
16 planned tree trimming; and

17 **(2)** the affected property owner has consented to the planned
18 tree trimming.

19 **(c)** A utility is not required to comply with subsection (b) if the
20 utility has well documented rights to manage vegetation with
21 respect to the affected property owner.

22 **Sec. 9. (a)** A property owner may enter into a written agreement
23 with a utility that requires the property owner to perform tree
24 trimming to maintain a safe distance between the property owner's
25 trees and the utility's lines.

26 **(b)** A property owner may be held liable for the costs of
27 repairing a specific utility line if:

28 **(1)** the property owner and the utility have entered into a
29 written agreement under this section; and

30 **(2)** the affected property owner fails to comply with the
31 written agreement.

32 **(c)** A utility is not liable for damages caused by tree trimming
33 performed by a property owner.

34 **(d)** A utility shall develop a standard written agreement to
35 accomplish the purposes of this section. A standard written
36 agreement is subject to review and approval by the commission
37 and must include the following:

38 **(1)** The recommended safe distance between a tree and utility
39 lines.

40 **(2)** The recommended frequency and extent of tree trimming
41 for common tree species.

42 **(3)** Other information that the utility or the commission
43 determines to be necessary.

44 **Sec. 10. (a)** For purposes of subsection (b), an emergency
45 includes the following:

46 **(1)** Falling trees.

47 **(2)** Trees causing power outages.

1 (3) Trees on fire due to contact with overhead lines.

2 (4) Other hazards with potential to cause damage to or harm
3 the public or property.

4 (b) A utility is exempt from the requirements of sections 4 and
5 7 of this chapter if:

6 (1) in response to an emergency, the commission acts under
7 IC 8-1-2-113 to temporarily alter, suspend, or amend any
8 rules adopted by the commission under this chapter; or

9 (2) the utility determines that an emergency exists that
10 requires the utility to undertake immediate action that
11 includes tree trimming in order to:

12 (A) prevent endangerment to life or property; or

13 (B) ensure the safety, reliability, or power quality of the
14 utility's electric distribution system;

15 subject to verification by the commission.

16 Sec. 11. (a) An affected property owner or a utility may file a
17 complaint with the commission to investigate and resolve a dispute
18 arising under this chapter. The commission shall conduct a hearing
19 under IC 8-1-2-34.5(b).

20 (b) Upon the request of an affected property owner, the utility
21 consumer counselor shall appear on behalf of the affected property
22 owner in a proceeding before the commission under this section or
23 IC 8-1-2-34.5(b).

24 (c) An affected party may seek review by the commission of a
25 decision issued by the appeals division under IC 8-1-2-34.5(b) for
26 a complaint filed under this section. A decision by the commission
27 under this subsection is final.

28 (d) The commission may award damages to an affected party if
29 the commission determines that the other party acted in bad faith
30 or otherwise failed to comply with this chapter. Damages awarded
31 under this subsection may not exceed three (3) times the actual
32 damages suffered by the affected party.

33 Sec. 12. The commission may adopt rules under IC 4-22-2 to
34 implement this chapter."

35 Page 2, between lines 27 and 28, begin a new paragraph and insert:

36 "SECTION 4. IC 8-20-1-28 IS AMENDED TO READ AS
37 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 28. Public and
38 municipally owned utilities are authorized to construct, operate, and
39 maintain their poles, facilities, appliances, and fixtures upon, along,
40 under, and across any of the public roads, highways, and waters outside
41 of municipalities, as long as they do not interfere with the ordinary and
42 normal public use of the roadway, as defined in IC 9-13-2-157.
43 However, the utility shall review its plans with the county executive
44 before locating the pole, facility, appliance, or fixture. **Subject to the**
45 **requirements of IC 8-1-38**, the utility may trim any tree along the road
46 or highway, but may not cut down and remove the tree without the
47 consent of the abutting property owners, unless the cutting or removal

1 is required by rule or order of the Indiana utility regulatory
2 commission. The utility may not locate a pole where it interferes with
3 the ingress or egress from adjoining land."

4 Renumber all SECTIONS consecutively.

(Reference is to ESB 43 as printed February 22, 2008.)

Representative Crooks